



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. E. Weaver
County Auditor
Hecogdochas County
Hecogdochas, Texas

Dear Mr. Weaver:

Opinion No. 9-1835

Re: Can a citizen legally be a candidate for a county office that is elective and on a salary basis, and, at the same time, be a candidate for the elective office of Chairman of the County Democratic Executive Committee, which is a non-paying office?

Your request for an opinion on the above-stated question has been received by this office.

Article 2940, Revised Civil Statutes, as amended, would prohibit an individual from being a candidate for the chairmanship of the Democratic Executive Committee and at the same time a candidate for a county office. The pertinent part of this statute reads as follows:

"No one who holds an office of profit or trust under the United States or this State, or in any city or town in this State, or within thirty days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for office, or who has not paid his Poll Tax, shall act as judge, clerk, or supervisor of any election; nor shall any one act as chairman or as a member of any District, County or City Executive Committee of a political party who has not paid his poll tax, or who is a candidate for office, or who holds any office of profit or trust under either the United States or this State, or in any city or town of this State; . . ." (Underscoring ours.)

It should be pointed out here that a candidate for the chairmanship of a county political party is elected and

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enters into the duties of his office after any primary election at which he receives a clear majority; whereas a candidate for a county office is not duly elected until the November election, and then does not take office until the following January. The resultant possible disqualifications and confusions are too obvious to mention. Suffice it to say that unless this statute is very closely followed, we could have a situation wherein a county chairman was supervising a contest of his own candidacy in a primary election.

Further, Article 2978, Revised Civil Statutes, prohibits a candidate from placing his name on the official ballot more than once, except as a candidate for two or more offices permitted by the Constitution.

Article 2978, Revised Civil Statutes. Official Ballot. "In all elections by the people, the vote shall be by official ballot, which shall be numbered, an election so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. . . . The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the Constitution to be held by the same person. . . ." (Underscoring ours.)

This department, in a letter opinion addressed to Mr. E. F. Kauffman, Chairman of the Democratic Executive Committee of Tarrant County, Texas, by the Honorable R. E. Gray, Assistant Attorney General, ruled on this question as follows:

"Can this party have his name placed on the ballot for the legislature, and also have his name printed on the ballot as a candidate for precinct chairman at the same election?"

After citing Article 2940, R. C. S. of Texas, as amended, Article 318, R. C. S., Article 2978, R. C. S., and Article 16, Section 40, of the Constitution, Mr. Gray concludes as follows:

"In view of the interpretation of the above

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statutes and provisions of the Constitution, and in answer to your first question you are advised that it is our opinion that no candidate can have his name placed on the ballot for two offices."

We agree with the conclusion reached by Mr. Cray, but do not feel that Article 16, Section 40, of the Constitution of the State of Texas applies to such a case. See *Walker v. Hopping*, 226 S. W. 146; *Walker v. Mobley*, 103 S.W. 490; *Coy v. Schnieder*, 218 S. W. 479.

Therefore, it is the opinion of this department that an individual cannot be a candidate for the county chairmanship of the Democratic Party and a candidate for another county elective office at the same time.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY 

Frederik B. Isely
Assistant

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APPROVED JAN 29, 1940


ATTORNEY GENERAL OF TEXAS

